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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 160 (MKV)

5 SETH FISHMAN and
6 LISA GIANNELLI,

7 Defendants.

Trial

8 New York, N.Y.
9 January 19, 2022
9:10 a.m.

10 Before:

11 HON. MARY KAY VYSKOCIL,

12 District Judge
13 -and a Jury-

14 APPEARANCES

15 DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

16 BY: ANDREW C. ADAMS

SARAH MORTAZAVI

17 ANDEN F. CHOW

Assistant United States Attorneys

18 SERCARZ & RIOPELLE, LLP

Attorneys for Defendant Fishman

19 BY: MAURICE H. SERCARZ

20 MARC A. FERNICH

21 FASULO, BRAVERMAN & DiMAGGIO, LLP

Attorneys for Defendant Giannelli

22 BY: LOUIS V. FASULO

23 Also Present: Karline Jung, Paralegal Specialist
24 Sean McCabe, Paralegal Specialist
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1 (Case called, jury venire not present)

2 DEPUTY CLERK: Counsel for the government, please
3 state your name for the record.

4 MS. MORTAZAVI: Good morning, your Honor, Sarah
5 Mortazavi for the government, and I am joined by Mr. Anden
6 Chow, Mr. Andrew Adams and Karline Jung, a paralegal in our
7 office.

8 THE COURT: Good morning, everyone.

9 MR. SERCARZ: For the defendant, Mr. Fishman, Maurice
10 Sercarz.

11 Mr. Fasulo stepped momentarily outside the courtroom,
12 and Mr. Fishman is here, your Honor.

13 THE COURT: I didn't hear the last part.

14 MR. SERCARZ: Dr. Fishman is here.

15 THE COURT: Mr. Sercarz, let me ask you, how do you
16 pronounce your firm's name?

17 MR. SERCARZ: Sercarz & Riopelle.

18 THE COURT: Sercarz and Riopelle. Thank you.

19 Are we missing Mr. Fasulo?

20 MR. McCABE: Mr. Fasulo just stepped out. He will be
21 right back.

22 THE COURT: Maybe someone will let him know that we
23 have begun.

24 MS. MORTAZAVI: Your Honor, I will step in the hallway
25 in case he's outside.

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(Pause)

THE COURT: We were taking appearances for the defendants, Mr. Fasulo.

MR. FASULO: Yes, Louis Fasulo, Fasulo, Braverman & Dimaggio, for the defendant, Lisa Giannelli, who seated in the first row by counsel table.

THE COURT: And your colleague?

MR. FASULO: Mr. Sean McCabe, our paralegal.

THE COURT: All right. And we have our court reporter, Mr. McDaniel, with us. Thank you for being here. And it's my understanding that Mr. McDaniel will be one of the two court reporters who will be with us throughout the trial, so you all should know who he is.

So we're waiting for the jury administrators to do what they need to do in order to have our respective jury panel ready and available for us to all to go downstairs and begin jury selection.

I had just one item of business that I wanted to raise. I talked to defense counsel about this as everyone was assembling. I did have a nagging thought, is the best way for me to put it, all evening last night about the request by Dr. Fishman that he be permitted to sit somewhere so that he could better communicate with his counsel, and I do think it's a fair point and a legitimate concern. So I have told him and I told Mr. Fasulo as well with respect to Ms. Giannelli that

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1 there are seats in the back behind Mr. Fasulo and in front of
2 the bar there next to where Mr. Sercarz is sitting that are
3 intended for the marshals if we had in-custody defendants. But
4 since Ms. Giannelli and Dr. Fishman are not incarcerated, those
5 seats will be vacant throughout the trial. It seems to me if
6 the marshals could sit there, don't see any reason why the
7 defendants can't. So that's for the record.

8 MR. SERCARZ: I want to thank you, your Honor, for
9 maintaining that thought and helping us resolve this issue.

10 THE COURT: You're welcome.

11 MR. FASULO: And for the defense, we understand where
12 the defense will sit. It is convenient where she is now. At
13 times she may be behind me, so it works very well for us, and
14 we appreciate the Court's work in that area.

15 THE COURT: No worries. The only thing I would ask is
16 obviously when we have the jury here, I don't want a lot of
17 moving parts. So if one of you needs to trade off where you're
18 sitting because somebody is going to take the lead with respect
19 to a particular witness, obviously that's fine, do it before
20 the questioning starts, but we don't want to have a lot of
21 people popping up and down and moving around in the galley
22 area. You all seem to be seated in appropriate places and
23 maintaining social distancing, so I appreciate that as well,
24 and it's important that we maintain that throughout the trial.

25 Okay. So there anything else we all should talk about

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1 before we hear from the jury administrator?

2 MS. MORTAZAVI: Your Honor, I provided Ms. Dempsey
3 with a copy of an order permitting the government to use the
4 Wi-Fi network, which we were instructed yesterday we will need,
5 so I wanted to bring that to the Court's attention.

6 THE COURT: Okay, thank you.

7 MR. FERNICH: Judge, on that note, I received a Wi-Fi
8 code for last week but not for one this week. I guess it has
9 to be done on a weekly basis.

10 DEPUTY CLERK: I will forward the order again.

11 THE COURT: Ms. Dempsey will help you take care of
12 that. This is all above my pay grade.

13 Do each of the sets of defense counsel have what they
14 need in terms of Wi-Fi?

15 MR. FASULO: We have our order for electronic devices.
16 I don't know about the Wi-Fi issue, but we will put in a
17 separate order for Wi-Fi as well. I will work with Ms. Dempsey
18 on that.

19 THE COURT: Okay. Is there anything else then?

20 MR. SERCARZ: Your Honor, I understand the defense for
21 Dr. Fishman is taken care of. I may ask that my investigator
22 be permitted to bring his phone into the building, and there
23 may be further wrinkle do that application, but I will
24 coordinate with a Ms. Dempsey, if that's all right.

25 THE COURT: Anything else?

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1 MS. MORTAZAVI: Your Honor, since we have the time, I
2 may as well forecast for the Court and for the parties in the
3 event we do proceed to witness testimony today, we're
4 anticipating putting on a special agent who will authenticate
5 physical exhibits that were seized. And so what we had
6 imagined was that the physical exhibits would be brought into
7 the courtroom here so that she could actually view them from
8 the witness stand and authenticate them appropriately. And we
9 just wanted to make sure the Court was aware of that.

10 THE COURT: That's fine. Do you have some sort of
11 cart?

12 MS. MORTAZAVI: That is our intent, to have some sort
13 of cart or trolley to hold the exhibits.

14 THE COURT: Right. I assume you shared these with the
15 defendants?

16 MS. MORTAZAVI: The defendants are aware that we're
17 introducing physical exhibits. They have had photographs of
18 those exhibits available to them, and, of course, they're
19 available for inspection.

20 MR. FASULO: Judge, I just request that we have five
21 minutes or so before the jury sees it so we can look at and
22 comport what we have with what is being shown to the jury so we
23 don't run into any problem with that.

24 THE COURT: Seems fair to me.

25 MS. MORTAZAVI: That's fine, your Honor. For purposes

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1 of authentication, we asked that the agent accompany the
2 physical exhibits from the evidence locker where they're kept
3 at FBI to the courthouse. So the special agent will need to be
4 present in order for us to make sure that she can authenticate
5 them, and I just want counsel to be aware.

6 THE COURT: What we'll do is give them time here in
7 the courtroom. The agent will bring them in, be unseen, we'll
8 take five minutes before you call your first witness, if we get
9 to that today. But here in the courtroom the defendants can
10 look at them in the presence of counsel.

11 MS. MORTAZAVI: Of course, no issues.

12 MR. FASULO: No issue, Judge.

13 THE COURT: Anything from you, Mr. Sercarz?

14 MR. SERCARZ: No objection.

15 THE COURT: Anything else then?

16 MS. MORTAZAVI: Not from the government, thank you.

17 THE COURT: Mr. Sercarz?

18 MR. SERCARZ: Nothing in addition.

19 MR. FASULO: Nothing from defendant Giannelli.

20 THE COURT: Then we'll stand in recess until we hear
21 from the jury administrators. I hope it will be within the
22 next 10 or 15 minutes, then we will all assemble downstairs.

23 Ms. Dempsey, I will leave it to you to tell everyone
24 where they need to go once we hear.

25 DEPUTY CLERK: Room 160.

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1 THE COURT: I will see everybody downstairs hopefully
2 very shortly.

3 MS. MORTAZAVI: Thank you, your Honor.

4 MR. SERCARZ: Thank you.

5 MR. FASULO: Thank you, your Honor.

6 (Recess taken and jury selection commenced)

7 (Jury selection proceedings are contained in a
8 separate trial transcript)

9 (Adjourned to January 20, 2022 at 9:15 a.m.)

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